

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1404

**Introduced by Assembly Members De Leon, *Carter*, and V. Manuel
Perez**

February 27, 2009

An act to ~~add Sections 38572 and 38573 to~~ *amend Section 38505 of,*
and to add Section 38573 to, the Health and Safety Code, relating to
air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1404, as amended, De Leon. California Global Warming Solutions Act of 2006: offsets.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. *The act authorizes the state board to adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act. The fee revenues are deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out the act.* The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for compliance with those regulations. The state board is required, before

including any market-based compliance mechanism, to maximize additional environmental and economic benefits for California, as appropriate.

This bill would require the state board, if the state board allows the use of market-based compliance mechanisms, ~~to create an independent entity to be regulated by the state board to independently verify a greenhouse gas emission offset to ensure the emission reduction claim is real, permanent, and additional. Both providers and users of offsets would be required to pay a fee to this entity, in amounts to be determined by the state board, to pay for the costs of the verification. limit the use of compliance offsets, as defined, that meet specific criteria, to no more than 10% of the greenhouse gas emission reductions expected from market mechanisms during the compliance period. The bill would require the state board to apply the limit as a percentage of each regulated facility's reported emissions in a compliance period. The bill would require the state board to impose an offset verification fee on entities buying and selling compliance offsets, for deposit into the fund. Under the bill, fee revenues would be available, upon appropriation, to pay for expenses related to state board administration of the compliance offset program.~~

~~The bill would require an offset used for compliance to be similarly as effective in reducing emissions of pollutants in addition to greenhouse gases as would a direct emission reduction measure by the user of that offset. The bill would also require an offset to be located in the same air pollution control district or air quality management district in which the user of the offset emits greenhouse gas emissions that makes them subject to emission reduction requirements pursuant to this act, or if an offset cannot be found that meets this requirement, an offset in California in an environmentally disadvantaged community would be required to be purchased, if an offset can be found that meets this requirement. In addition, a source would be prohibited from using more than 10% emission offsets to meet the greenhouse gas emission reductions required during a compliance period created by the state board.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 38505 of the Health and Safety Code is
- 2 amended to read:

1 38505. For the purposes of this division, the following terms
2 have the following meanings:

3 (a) “Allowance” means an authorization to emit, during a
4 specified year, up to one ton of carbon dioxide equivalent.

5 (b) “Alternative compliance mechanism” means an action
6 undertaken by a greenhouse gas emission source that achieves the
7 equivalent reduction of greenhouse gas emissions over the same
8 time period as a direct emission reduction, and that is approved
9 by the state board. “Alternative compliance mechanism” includes,
10 but is not limited to, a flexible compliance schedule, alternative
11 control technology, a process change, or a product substitution.

12 (c) “Carbon dioxide equivalent” means the amount of carbon
13 dioxide by weight that would produce the same global warming
14 impact as a given weight of another greenhouse gas, based on the
15 best available science, including from the Intergovernmental Panel
16 on Climate Change.

17 (d) “Cost-effective” or “cost-effectiveness” means the cost per
18 unit of reduced emissions of greenhouse gases adjusted for its
19 global warming potential.

20 (e) *“Compliance offset” means the quantified reduction of*
21 *greenhouse gas emissions used as a substitute for direct*
22 *compliance with a greenhouse gas reduction regulation or market*
23 *mechanism. A compliance offset is based on emission reductions*
24 *occurring outside of the sector or sectors covered by the*
25 *greenhouse gas regulation.*

26 ~~(e)~~

27 (f) “Direct emission reduction” means a greenhouse gas emission
28 reduction action made by a greenhouse gas emission source at that
29 source.

30 ~~(f)~~

31 (g) “Emissions reduction measure” means programs, measures,
32 standards, and alternative compliance mechanisms authorized
33 pursuant to this division, applicable to sources or categories of
34 sources, that are designed to reduce emissions of greenhouse gases.

35 ~~(g)~~

36 (h) “Greenhouse gas” or “greenhouse gases” includes all of the
37 following gases: carbon dioxide, methane, nitrous oxide,
38 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

39 ~~(h)~~

1 (i) “Greenhouse gas emissions limit” means an authorization,
2 during a specified year, to emit up to a level of greenhouse gases
3 specified by the state board, expressed in tons of carbon dioxide
4 equivalents.

5 ~~(i)~~

6 (j) “Greenhouse gas emission source” or “source” means any
7 source, or category of sources, of greenhouse gas emissions whose
8 emissions are at a level of significance, as determined by the state
9 board, that its participation in the program established under this
10 division will enable the state board to effectively reduce greenhouse
11 gas emissions and monitor compliance with the statewide
12 greenhouse gas emissions limit.

13 ~~(j)~~

14 (k) “Leakage” means a reduction in emissions of greenhouse
15 gases within the state that is offset by an increase in emissions of
16 greenhouse gases outside the state.

17 ~~(k)~~

18 (l) “Market-based compliance mechanism” means either of the
19 following:

20 (1) A system of market-based declining annual aggregate
21 emissions limitations for sources or categories of sources that emit
22 greenhouse gases.

23 (2) Greenhouse gas emissions exchanges, banking, credits, and
24 other transactions, governed by rules and protocols established by
25 the state board, that result in the same greenhouse gas emission
26 reduction, over the same time period, as direct compliance with a
27 greenhouse gas emission limit or emission reduction measure
28 adopted by the state board pursuant to this division.

29 ~~(l)~~

30 (m) “State board” means the State Air Resources Board.

31 ~~(m)~~

32 (n) “Statewide greenhouse gas emissions” means the total annual
33 emissions of greenhouse gases in the state, including all emissions
34 of greenhouse gases from the generation of electricity delivered
35 to and consumed in California, accounting for transmission and
36 distribution line losses, whether the electricity is generated in state
37 or imported. Statewide emissions shall be expressed in tons of
38 carbon dioxide equivalents.

39 ~~(n)~~

1 (o) “Statewide greenhouse gas emissions limit” or “statewide
2 emissions limit” means the maximum allowable level of statewide
3 greenhouse gas emissions in 2020, as determined by the state board
4 pursuant to Part 3 (commencing with Section 38550).

5 SEC. 2. Section 38573 is added to the Health and Safety Code,
6 to read:

7 38573. If the state board allows the use of market-based
8 compliance mechanisms pursuant to Section 38570, all of the
9 following shall apply:

10 (a) The state board shall limit the use of compliance offsets
11 within a compliance period to no more than 10 percent of the
12 greenhouse gas emission reductions expected from market
13 mechanisms during that compliance period. The state board shall
14 apply the limit as a percentage of each regulated facility’s reported
15 emissions in a compliance period.

16 (b) The state board shall approve compliance offsets only if
17 those compliance offsets meet all of the following criteria:

18 (1) The compliance offset has been verified by an independent,
19 third-party verifier who has been certified and assigned by the
20 state board.

21 (2) The independent verifier has certified that the emission
22 reductions represented by the compliance offset meets the
23 requirements of a protocol adopted by the state board. Protocols
24 shall be developed to meet the requirements of paragraph (1) of
25 subdivision (d) of Section 38562.

26 (3) The compliance offset is entered into a tracking system
27 developed or designated by the state board and assigned a unique
28 serial number.

29 (4) The compliance offset is permanently retired and the
30 emission reductions represented by the compliance offset have not
31 been claimed by any other entity.

32 (5) The compliance offset shall not cause or contribute to
33 significant adverse effects on human health or the environment as
34 determined by the state board.

35 (6) The compliance offset is not a certified emission reduction
36 credit developed as part of the Kyoto Protocol’s Clean
37 Development Mechanism.

38 (c) Compliance offsets shall meet the requirements for emission
39 reductions in Section 38562.

(d) Subject to subdivision (a), the state board shall establish incentives or guidelines that prioritize the use of compliance offsets in the following order:

(1) Compliance offsets that result in air quality benefits to California communities disproportionately impacted by air pollution, as determined by the state board. A preference shall be made for compliance offsets that benefit air quality in the same air pollution control district or air quality management district where the facility claiming the offset credit is located.

(2) Compliance offsets that comply with Section 38565.

(3) Compliance offsets that result in cobenefits to public health and the environment anywhere in the state.

(e) The state board shall impose an offset verification fee on entities buying and selling compliance offsets. The fee shall be imposed and collected, and the revenues shall be deposited into the Air Pollution Control Fund, in accordance with Section 38597. Revenues deposited into the Air Pollution Control Fund pursuant to this section shall be available, upon appropriation by the Legislature, to pay for expenses related to state board administration of the compliance offset program.

~~SECTION 1. Section 38572 is added to the Health and Safety Code, to read:~~

~~38572. (a) If the state board allows the use of market-based compliance mechanisms pursuant to Section 38570, the state board shall create an independent entity to be regulated by the state board to independently verify a greenhouse gas emission offset to ensure the emission reduction claim is real, permanent, and additional, including the creation of an auditing system to ensure the permanency of an offset.~~

~~(b) Any individual or entity may sell an offset if the offset meets criteria to be developed by the state board, and the offset has been verified pursuant to subdivision (a).~~

~~(c) Both providers and users of offsets shall pay a fee, in amounts to be determined by the state board, to the entity created pursuant to subdivision (a) to pay for the costs of the verification. The fee shall be set in a manner to ensure that an offset user pays increased fees as the user purchases more offsets to meet the emission reduction requirements established by the state board. All fees shall be deposited pursuant to Section 38597.~~

1 SEC. 2. ~~Section 38573 is added to the Health and Safety Code,~~
2 ~~to read:~~

3 ~~38573. If the state board allows the use of market-based~~
4 ~~compliance mechanisms pursuant to Section 38570, offsets may~~
5 ~~be used to meet the requirements of this act only as follows:~~

6 ~~(a) An offset shall be similarly as effective in reducing emissions~~
7 ~~of pollutants in addition to greenhouse gases as would a direct~~
8 ~~emission reduction measure by the user of that offset.~~

9 ~~(b) (1) An offset may only be used for compliance, if the~~
10 ~~emission reduction or sequestration project that generated the offset~~
11 ~~is located in the same air pollution control district or air quality~~
12 ~~management district in which the user of the offset emits~~
13 ~~greenhouse gas emissions that makes them subject to emission~~
14 ~~reduction requirements pursuant to this act.~~

15 ~~(2) If an offset cannot be found that meets the requirement of~~
16 ~~paragraph (1), an offset shall be purchased where the emission~~
17 ~~reduction or sequestration project that generated the offset is~~
18 ~~located in California in an environmentally disadvantaged~~
19 ~~community.~~

20 ~~(3) If the state board verifies that an offset cannot be found that~~
21 ~~meets the requirements of paragraphs (1) and (2), an offset~~
22 ~~consistent with subdivision (a) may be used for compliance.~~

23 ~~(c) A source shall not be allowed to use more than 10 percent~~
24 ~~emission offsets to meet the greenhouse gas emission reductions~~
25 ~~required during a compliance period created by the state board.~~